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FILED

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U.S. BANKRUPTCY COURT
DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In Re:

BCE WEST, L.P., a Delaware limited
partnership,

Debtor.

EID 38-3196719

THOMAS J. CONWAY,

Movant,

vs.

BOSTON CHICKEN, INC.,

Respondent.

Chapter 11 Proceedings

Case No. 98-12547-PHX-CGC
through 98-12570-PHX-CGC

Contested Matter ____

MOTION FOR RELIEF FROM
THE AUTOMATIC STAY
(CONWAY)

Thomas J. Conway ("Movant"), through counsel undersigned, hereby requests
an Order from the Court modifying the stay provided by § 362 of the Bankruptcy Code
and other stays against lien enforcement and alleges as follows:

1. Debtor, Boston Chicken, Inc. ("Debtor" or "Respondent") filed a petition for
relief under Chapter 11 of the U.S. Bankruptcy Code commencing the above-captioned
proceeding. Contemporaneously, numerous affiliates of, or related parties to, the

1 Debtor ("Affiliates") also filed Chapter 11 petitions. The bankruptcies of Debtor and the
2 Affiliates are being jointly administered in the above captioned administrative file.

3 2. On or about July 30, 1998, Movant filed a complaint against Boston
4 Market, Inc., BC Metro, Inc. and others, dba Boston Market, in the Superior Court of
5 Bergen County, New Jersey (the "Complaint", a copy of which is attached as Exhibit A
6 and incorporated by this reference), alleging the defendants named therein were guilty
7 of, and liable to, Movant for employment discrimination as described more fully in the
8 Complaint (the "State Court Action").

9 3. The Debtor and/or one or more of the Affiliates are proper party
10 defendants in the State Court Action.

11 4. Upon information and belief, the liability of Debtor and/or one or more of
12 the Affiliates and/or their employees, agents or servants for engaging in the conduct
13 described in the Complaint are, or may be, covered by third party liability insurance.

14 5. To the extent the conduct of Debtor, the Affiliates, and/or their agents,
15 employees and servants is not covered by third party liability insurance coverage,
16 Movant is entitled to determine the liability of, and liquidate the amount of its claim
17 against, Debtor or the Affiliates, and that process can be most efficiently and effectively
18 conducted in the pending State Court Action.

19 6. Movant hereby requests this Court modify and vacate the automatic stay
20 pursuant to 11 U.S.C. § 362, to permit Movant to continue the prosecution of the
21 Complaint and, if judgment is rendered in favor of Plaintiff, to enable Movant to recover
22 from any non-estate source, including specifically any applicable insurer of the Debtor's
23 or the Affiliate's liability.

24 7. With respect to recovery from, or assertion of a claim against property of
25 the estate, Movant does not seek stay relief except to the extent necessary to permit
26 Movant to liquidate his claim against Debtor or the Affiliates, and to the extent not

1 satisfied by non-estate assets, to have his claim against Debtor or the Affiliates receive
2 the same treatment as any other similarly situated claimant of equal priority pursuant
3 to the Bankruptcy Code.

4 WHEREFORE, Movant requests that this Court enter an order granting the
5 following relief:

6 A. Terminating all stays and injunctions, including the automatic stay under
7 Bankruptcy Code § 362(a), permitting Movant to prosecute to conclusion the State
8 Court Action against the Debtor, the Affiliates (and/or any other non debtor party) as
9 described in the Complaint, and expressly authorizing Movant to proceed to judgment
10 and take all such post-judgment action reasonably necessary to satisfy Movant's claim
11 against the non-estate assets, including specifically the proceeds of any insurance
12 coverage.

13 B. For such other and further relief as is just and equitable.

14 DATED this 2nd day of July, 1999.

15 TIFFANY & BOSCO, P.A.

16
17 By _____

J. Lawrence McCormley
Fifth Floor, Voad Tower
1850 North Central Avenue
Phoenix, Arizona 85004
Attorneys for Movant

21 COPY of the foregoing mailed this
22 2nd day of July, 1999, to:

23 Those persons and entities listed
24 on the Master Service List

25
26 _____

SUPERIOR COURT BERGEN COUNTY
FILED

JUL 30 1998

Jim G. [Signature]
DEPUTY CLERK

RALPH A. FERRO, Jr.
31 EAST RIDGEWOOD AVENUE
RIDGEWOOD, N. J. 07450
(201) 444-3000
ATTORNEYS FOR Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Plaintiff

THOMAS J. CONWAY

vs.

Defendant

Docket No. *L-7078-98*

CIVIL ACTION

BOSTON MARKET, INC., BC METRO, INC.,
ROBERT ANARAMO, individually and as
agent, servant and/or employee of
BOSTON MARKET, INC. and/or BC METRO, INC.
and WILLIAM SAMBUCA, individually and as
agent, servant and/or employee of
BOSTON MARKET, INC. and/or BC METRO, INC.

COMPLAINT

Plaintiff, Thomas J. Conway, residing at 75 Ripplewood
Drive in the Borough of Upper Saddle River, County of Bergen
and State of New Jersey, by way of Complaint against the
defendants, says:

FIRST COUNT:

1. At all times mentioned herein, defendants, Boston Market, Inc. and/or BC Metro, Inc. are business entities authorized to conduct business in the State of New Jersey.

2. At all times mentioned herein, defendant, Boston Market, Inc. is a subsidiary of BC Metro, Inc. and/or a subsidiary or parent company of BC Metro, Inc., or vice-versa.

3. At all times mentioned herein, defendant, Robert Anaramo and defendant, William Sambuca were agents, servants and/or employees of defendants, Boston Market, Inc. and/or BC Metro, Inc., employed in management capacities with decision-making authorities superior to that of plaintiff.

4. From in or around January, 1996 through November, 1996, plaintiff was employed by defendants.

5. Plaintiff's duties included, but were not limited to, hiring managers and/or support staff for defendants' stores in plaintiff's territory.

6. In or around January, 1996, defendant, Robert Anaramo ordered plaintiff not to hire African-American managers and/or employees, in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

7. In or around January, 1996, defendant, William Sambuca explained to plaintiff that it is the policy of defendants not to hire African-American managers/employees, in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

8. Notwithstanding defendants', Boston Market, Inc. and/or BC Metro, Inc. discriminatory practices, plaintiff hired an African-American manager in or around May of 1996.

9. A short time thereafter, defendant, William Sambuca reprimanded plaintiff for hiring said African-American manager, in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

10. Notwithstanding defendants' discriminatory practices and policies and reprimands, plaintiff hired two additional African-American managers, one in September, 1996 and the other in October, 1996.

11. In or around October, 1996, defendants terminated plaintiff's employment with defendants for hiring the aforementioned African-American managers/employees, in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

12. Said actions by the defendants were designed to sabotage and/or thwart plaintiff's attempts to comply with New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq., in direct violation of New Jersey's Law Against Discrimination.

13. As a result of defendants' discriminatory termination of plaintiff's employment with defendant, plaintiff has suffered damages, including, but not limited to, psychological damages, both temporary and permanent, and lost wages, current and prospective.

WHEREFORE, plaintiff demands judgment on this Count against the defendants, for:

- A. Actual damages;
- B. Compensatory damages;
- C. Punitive damages;
- D. Attorney's fees and costs of suit;
- E. Pre-judgment interest.

SECOND COUNT:

1. Plaintiff repeats and realleges each and every allegation set forth in the First Count of his Complaint and annexes them hereto and makes them a part hereof as though more fully set forth.

2. In or around October, 1996, defendants negligently terminated plaintiff's employment with defendants for hiring the aforementioned African-American managers/employees, in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq.

3. Said negligent actions by the defendants were designed to sabotage and/or thwart plaintiff's attempts to comply with New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1, et seq., in direct violation of New Jersey's Law Against Discrimination.

4. As a result of defendants' grossly negligent discriminatory termination of plaintiff's employment with defendant, plaintiff has suffered damages, including, but not limited to, psychological damages, both temporary and permanent, and lost wages, current and prospective.

WHEREFORE, plaintiff demands judgment on this Count against the defendants for:

- A. Actual damages;
- B. Compensatory damages;
- C. Punitive damages;
- D. Attorney's fees and costs of suit;
- E. Pre-judgment interest.



Ralph A. Ferro, Jr.
Attorney for Plaintiff

JURY DEMAND


Plaintiff hereby demands a trial by jury as to all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-1, Ralph A. Ferro, Jr. is hereby designated as trial counsel in this lawsuit.

CERTIFICATION OF ENTIRE CONTROVERSY

Pursuant to R. 4:5-1, I hereby certify that no other action between the parties hereto is now pending or contemplated in any court or arbitration proceeding and that there are no other parties who should be joined in this lawsuit.



Ralph A. Ferro, Jr.
Attorney for Plaintiff

Dated: July 29, 1998